IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4830 of 1998
With
FIRST APPEAL No. 4831 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBALAL HIRJIBHAI DESAI - Appellant(s)
Versus
JANAKBHAI MANAKLAL SHAH & 1 - Defendant(s)

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Appearance :

MR MAUHSIN HAKIM for MTM HAKIM for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS MEGHA JANI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 28/02/2007

ORAL COMMON JUDGMENT

1. Since both these appeals arise from the common judgment and award made by Motor Accident Claims Tribunal

[Auxi.] III, Nadiad in MACP No. 1297/1988 and MACP No. 1298/1988 dated 27th November, 1997, they are heard together and now they are being disposed of by this common judgment. First Appeal No. 4830/1998 has been filed by the claimant of MACP No. 1297/1988, whereas First Appeal No. 4831/1998 has been filed by the claimant of MACP No. 1298/1988. They have in these appeals sought enhancement of the compensation awarded by Tribunal.

2. The accident in question occurred on 4th September, 1989. On that day, they were travelling on motorcycle bearing registration no. GTB 3318. They were proceeding from Anand to Surat. The other vehicle involved in the accident is fiat car bearing GBF 9111. It was going from Surat to Anand side. At the spot of the accident, both the vehicles collided and the motorcycle was dragged up to considerable distance on the eastern side of the road near Gulmohor tree. Both the appellants sustained serious injuries. There was extensive damage caused to the motorcycle also. It is the say of the appellant that since the driver of the fiat car was trying to overtake the rickshaw going ahead of it, it was driven in speed and on the wrong side of the road resulting into accident. The appellant of First Appeal No. 4830/1998 sustained fracture whereas appellant of

First Appeal no. 4831/1998 suffered serious injuries. They, therefore, preferred the aforesaid Motor Accident Claim Petitions claiming a sum of Rs.1 lakh and Rs.50,000=00 respectively. Their claims were resisted by the respondents by filing written statement at Exh. 95. They denied all the averments made in the petition and prayed that the claims be dismissed. The Tribunal on the basis of the material produced before it, held that so far as the driver of the fiat car was concerned, he was negligent to the extent of 75% whereas the negligence of Ambalal Hirjibhai Desai i.e., appellant of First Appeal No. 4830/1998 was to the extent of 25%. The Tribunal also assessed the compensation and awarded Rs.33,750=00 to the appellant of First Appeal No. 4830/1998 with running interest at the rate of 12% per annum from the date of the application till realization and proportionate costs, after deducing 25% of Rs.45,000=00. The Tribunal awarded Rs.13,500=00 to the appellant of First Appeal No. 4831/1998 together with 12% interest per annum from the date of the application till realization and proportionate costs. Since the appellants are dissatisfied with the quantum of compensation, they have filed these appeals.

3. Mr. Mauhsin Hakim learned advocate for the

appellant has submitted that the finding with regard to 25% negligence on the part of the appellant of First Appeal No. 4830/1998 is erroneous and contrary to the evidence on record. He has further submitted that the quantum of compensation awarded by the Tribunal is inadequate. In his submission, so far as the case of the appellant of First Appeal No. 4830/1998 is concerned, the Tribunal has not properly assessed the future loss of income. He has also submitted that in the case of the other appellant, under the head of pain, shock and suffering, less amount has been awarded. As against that Ms. Megha Jani learned advocate for the respondent – insurance company has supported the judgment and has submitted that there is no reason to interfere with the conclusion drawn by the Tribunal. She has further submitted that no compensation can be enhanced under the head of future loss of income because there is no evidence to the effect that the actual financial loss has been caused to the concerned appellant.

4. Having carefully considered the rival submissions and having perused the record and proceedings of the case, it clearly appears that there is head-on-collision between the two vehicles namely, fiat car and motorcycle. The appellants were proceeding from Anand to

Surat. According to them, they were driving on their correct side of the road. The offending vehicle namely fiat car came from the opposite direction in high speed and in the process of overtaking the rickshaw going ahead of it, it came on the wrong side and collided with the motorcycle. According to them the car totally went on its wrong side dragging the motorcycle up to about 8 ft. from the eastern edge of the road up to Gulmohor tree. The evidence of the appellant of First Appeal No. 4830/1998 is not at all effectively challenged by the other side. Not only that, but the panchnama of the scene of the occurrence lend complete corroboration to the say of the appellant. Merely because there is head-on-collision, it cannot necessarily be presumed that both the vehicles were at fault. In the instant case, there is no doubt in my mind that the fiat car had left its correct side and gone extremely on the wrong side causing the collision. The Tribunal therefore, erred in finding fault with the motorcycle. There does not appear to be any negligence on the part of the appellant who was driving the motorcycle. He seem to be on his correct side when the accident occurred. The said finding therefore, is erroneous and it is hereby quashed and set aside. In my opinion, the driver of the fiat car is solely negligent for causing the accident. So far as the loss of future income of

appellant of First Appeal No. 4830/1998 is concerned, while assessing it, the Tribunal has taken into consideration the disablement suffered by the said appellant. He had sustained serious injuries to his lower limbs. There was fracture and in one leg iron rod was to be inserted, whereas in the other, iron plate. The Medical Officer assessed the disability at 10%. However, the learned advocate for the parties before the Tribunal by consensus determined the disability at 5%. The Tribunal took the monthly income of the appellant at Rs.1,500=00 and on the basis of 5% the Tribunal found that there was loss of Rs.75=00 per month and Rs.900=00 per year. The said appellant was of the age 25 years and hence it applied the multiplier of 15 and determined the future loss of income at Rs.13,500=00. However, the Tribunal has completely lost the sight of the fact that the income of the said appellant would not have remained static at Rs.1,500=00 and with the passage of time, it would have increased. Applying the formula evolved in the case of Ritaben alias Vanitaben Wd/o. Dipakbhai Haribhai v. Ahmedabad Municipal Transport Service reported in 1999 (1) GLR p. 388, the future loss of income can be assessed at Rs.2,250=00. That would roughly come to Rs.112=00 per month and the actual loss of Rs.1,344=00. Applying the multiplier of 15, it will come to Rs.20,160=00. The

Tribunal has awarded Rs.13,500=00. Therefore, he will be entitled to additional amount of Rs.6,660=00 under the head of future loss of income.

5. So far as the appellant of First Appeal No. 4831/1998 is concerned, though he has stated that he had sustained fracture, the Tribunal has found that there is no evidence to substantiate his say. The Tribunal has nevertheless awarded a sum of Rs.7,500=00 for pain, shock and suffering. This appellant has produced at Exh. 62 the medical case papers which shows that he was having suspected fracture. The appellant has thereafter produced at Exh.67 which shows that he was having fracture of right pubic superior and inferior RAMI. Exh. 68 shows that he was having fracture of mid shaft. He did not produced any disablement certificate. Even, despite the aforesaid medical evidence, the Tribunal has held that there was no fracture. When documentary evidence is produced in the form of medical certificate on record, the Tribunal ought to have accepted it. In view of the aforesaid injuries, including two fractures, in my opinion, the award under the head of pain, shock and suffering, is less and it ought to have been Rs.12,500=00. Under this head, therefore, the appellant is entitled to Rs.5,000=00 more.

6. In the result, the finding of the Tribunal regarding 25% negligence of the appellant of First Appeal No. 4830/1998 is quashed and set aside and it is held that the driver of fiat car was 100% responsible for the accident. So far as this appellant is concerned, he is entitled to additional compensation of Rs.20,140=00 and the appellant of First Appeal No. 4831/1998 is entitled to additional compensation of Rs.18,500=00 together with 12% interest from the date of the application till realization and proportionate costs.

7. The appeals are, therefore, partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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